

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE: BILL HEARD ENTERPRISES, INC., et al.,¹ Debtors.)))))	Chapter 11 Case No. 08-83029-JAC-11
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**ORDER ON DEBTORS' MOTION PURSUANT TO BANKRUPTCY CODE §§ 366(b)
AND 105(a) FOR ORDER DEEMING UTILITY COMPANIES ADEQUATELY
ASSURED OF FUTURE PERFORMANCE AND ESTABLISHING
PROCEDURE FOR DETERMINING REQUESTS FOR ADDITIONAL
ADEQUATE ASSURANCES PURSUANT TO § 366**

This matter came to be heard upon the motion (the “Motion”) of Bill Heard, Inc. (“Heard”) and certain of its direct and indirect subsidiaries (the “Subsidiaries”), as debtors and debtors in possession (collectively, the “Debtors”), for an order establishing procedures for determining adequate assurance of payment to eligible entities pursuant to §§ 105, 366 and 503(b) of the Bankruptcy Code. Upon consideration of the *Affidavit of Fred C. Caruso in Support of Chapter 11 Petitions and First Day Orders*; the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; due

¹ In addition to Bill Heard Enterprises, Inc., the Debtors include the following entities: (i) Bill Heard Chevrolet Company, (ii) Tom Jumper Chevrolet, Inc., (iii) Bill Heard Chevrolet, Inc. - Huntsville, (iv) Landmark Chevrolet, Ltd., (v) Bill Heard Chevrolet, Ltd., (vi) Bill Heard Chevrolet Corporation Nashville, (vii) Bill Heard Chevrolet Corporation - Orlando, (viii) Bill Heard Chevrolet, Inc. - Union City, (ix) Bill Heard Chevrolet at Town Center, LLC, (x) Bill Heard Chevrolet, Inc. - Collierville, (xi) Bill Heard Chevrolet, Inc. - Scottsdale, (xii) Bill Heard Chevrolet, Inc. - Plant City, (xiii) Bill Heard Chevrolet, Inc. - Buford, (xiv) Bill Heard Chevrolet Corporation - Las Vegas, (xv) Bill Heard Chevrolet Corporation - N.W. Las Vegas, (xvi) Twentieth Century Land Corp., (xvii) Enterprise Aviation, Inc., (xviii) Century Land Corporation, (xix) Century Land Company - Tennessee, (xx) Bill Heard Management, LLC, (xxi) Landmark Vehicle Mgt., LLC, (xxii) Georgia Services Group, LLC, (xxiii) Columbus Transportation, LLC

notice of the Motion having been provided to (1) the Bankruptcy Administrator for the Northern District of Alabama; (2) counsel for the Debtors' primary prepetition secured lenders; (3) counsel for the Debtors' proposed postpetition secured lenders; (4) the Debtors' forty (40) largest unsecured creditors (on a consolidated basis); and (5) the District Director of Internal Revenue Service for the Northern District of Alabama; and it appearing that no other or further notice need be provided; the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; upon the Motion and all of the proceedings before this Court; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that as soon as possible after the entry of this Order, the Debtors shall serve a copy of this Order on all parties on the Master Service List (as defined in the Case Management Motion); and it is further

ORDERED that the Debtors are authorized to deposit \$33,500, a sum equal to roughly 5% of the Debtors' average prepetition monthly utility consumption, into an interest bearing account the "Utility Deposit Account;" and it is further

ORDERED that pending any further order of this Court, all Utility Companies providing service to the Debtors, including but not limited to those Utility Companies listed on Exhibit "A" to the Motion, are adequately assured of payment for future services by virtue of the existence of the Utility Deposit Account, and may not alter, refuse or discontinue service to the Debtors or discriminate against the Debtors; and it is further

ORDERED that the following procedures (the "Procedures") shall apply to any request by a Utility Company for additional adequate assurances of payment:

- a. Any Utility Company may request (a “Request”) further assurance of payment. A Request must be in writing and must: (i) identify the name, location and account number of the Debtor; (ii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Company; and (iii) set forth a list of any deposits or other security currently being held by the Utility Company.
- b. The Utility Company must serve its Request upon the Debtors’ counsel within thirty (30) days of the entry of an order approving the Motion (the “Request Deadline”) at the following address: BURR & FORMAN LLP, Attn: Derek F. Meek, 420 North 20th Street, Suite 3400, Birmingham, Alabama 35203.
- c. The Debtors and the Utility Company shall negotiate in good faith regarding the assurance of payment to be furnished to such Utilities and may enter into agreements for adequate assurance without further order of the Court.
- d. If the Debtors and a Utility Company making a timely Request for assurance of payment as set forth herein cannot agree on assurance of payment, within thirty days after the Request Deadline, the Debtors shall file a motion (a “Determination Motion”) pursuant to Section 366(c) of the Bankruptcy Code, seeking a determination from the Court that the adequate assurances offered in this Motion are sufficient adequate assurances of payment. The Utility Company that made the Request that is the subject of the Determination Motion may not alter, refuse or discontinue services to the Debtors until the Determination Motion is heard by the Court (the “Determination Hearing”).
- e. Any Utility Company that does not timely request assurance of payment as set forth herein, conclusively shall be deemed to have received adequate assurance of payment for future service under § 366 of the Bankruptcy Code and shall be prohibited from discontinuing, altering or refusing service to the Debtors.
- f. Pending further order of the Court, regardless of whether a Utility Company files a request for assurance of payment as set forth herein, the Debtors shall pay on a timely basis, in accordance with pre-petition practices, all undisputed invoices with respect to post-petition Utility Services rendered by any Utility Company within the meaning of § 366 of the Bankruptcy Code; and it is further

ORDERED that this Order is without prejudice to the right of a Utility Company to exercise its rights under § 366(c)(4); and it is further

ORDERED that provided that any Utility Company that does not timely request additional adequate assurance, as provided for herein, shall be deemed to have adequate assurance under §366; and it is further

ORDERED that in the event that a Determination Motion is filed, any objecting Utility Company shall be deemed to have adequate assurance of payment under §366 without the need for payment of additional deposits or securities until an order of the Court is entered resolving such Determination Motion; and it is further

ORDERED that this Order is without prejudice to the right of a Utility Company to seek further relief from the Court, not inconsistent with this Order, at any time; and it is further

ORDERED that this Order is without prejudice to the rights, claims and defenses of the Debtors under § 366 of the Bankruptcy Code, including, without limitation, the right of the Debtors to claim that any party seeking adequate assurance of payment under § 366 (including but not limited to the entities listed on Exhibit “A” to the Motion) is not a utility within the meaning of § 366 of the Bankruptcy Code; and it is further

ORDERED that this Order is without prejudice to the Debtors’ rights, claims and defenses under § 365 of the Bankruptcy Code, and nothing in this Order shall constitute or be deemed an approval of the Debtors’ assumption of any unexpired lease or executory contract; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters arising from or related to the interpretation or implementation of this Order; and it is further

ORDERED that the Debtors are hereby authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order.

DONE and ORDERED this day September 30, 2008

/s/ Jack Caddell
Jack Caddell
U.S. Bankruptcy Judge